

## Message Text

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PAGE 01 STATE 228554  
ORIGIN STR-07

INFO OCT-01 ARA-11 ISO-00 STRE-00 TRSE-00 LAB-04  
COME-00 EB-08 SIG-03 AGRE-00 CEA-01 CIAE-00  
DODE-00 FRB-03 H-01 INR-10 INT-05 L-03 NSAE-00  
NSC-05 PA-01 CTME-00 AID-05 SS-15 ITC-01 ICA-11  
SP-02 SOE-02 OMB-01 DOE-15 JUSE-00 /115 R

DRAFTED BY STR:MHATHAWAY:MM  
APPROVED BY STR:RRIVERS  
TREASURY:PEHRENHAFT  
TREASURY:IWILLIAMSON  
LABOR:FLAVALLEE(SUBS)  
STATE:CJACOBINI(SUBS)  
STATE:SBRATTAIN(SUBS)  
COMMERCE:DSHARK(SUBS)  
COMMERCE:RBOWIE(SUBS)

-----052904 090601Z /14

P 082340Z SEP 78  
FM SECSTATE WASHDC  
TO ALL OECD CAPITALS PRIORITY  
ALL EAST ASIAN AND PACIFIC DIPLOMATIC POSTS  
AMEMBASSY BRASILIA  
AMEMBASSY MEXICO  
AMEMBASSY CARACAS

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MTN DELEGATION GENEVA

E.O. 11652:

TAGS: ETRD, GATT

SUBJECT: COMMERCIAL COUNTERFEITING, INSTRUCTIONS FOR  
CUSTOMS MATTERS SUBGROUP AND NTM PARENT GROUP MEETINGS.  
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1. PARA 2 BELOW PROVIDES PRINCIPLES OF COMMERCIAL COUNTER-  
FEITING AGREEMENT FOR CIRCULATION AT 12 SEPT 78 CUSTOMS  
MATTERS SUBGROUP MEETING. THESE PRINCIPLES OUTLINE BASIC  
ELEMENTS OF AGREEMENT WHICH HAVE BEEN CIRCULATED TO PRIVATE  
SECTOR ADVISORS. A MORE DETAILED POSITION CAN BE PRESENTED  
IN CONNECTION WITH BILATERAL CONSULTATIONS DURING FOLLOWING

WEEKS. TO THAT END MTN DEL SHOULD ATTEMPT TO SCHEDULE SUCH MEETINGS TO BE HELD WITH KEY DELEGATIONS AS SOON AS FEASIBLE, POSSIBLY IN CONJUNCTION WITH VALUATION NEGOTIATIONS.

2. AN AGREEMENT DESIGNED TO STRENGTHEN RULES AND PROCEDURES TO COUNTER CASES OF TRADE IN COUNTERFEIT TRADEMARKED GOODS SHOULD CONTAIN THE FOLLOWING ELEMENTS:

A. THE AGREEMENT SHOULD REQUIRE THE SEIZURE AND, IN THE ABSENCE OF THE CONSENT OF TRADEMARK OR TRADENAME OWNER, THE FORFEITURE OF COUNTERFEIT MERCHANDISE TO THE GOVERNMENT OF THE COUNTRY OF IMPORTATION. IN COMPLIANCE WITH THE PROCEDURES

OF THE AGREEMENT, SUCH FORFEITED MERCHANDISE SHOULD THEN BE DISPOSED OF IN A MANNER THAT WOULD PREVENT THE PRODUCER AND THE IMPORTER FROM DERIVING ANY BENEFIT FROM SUCH IMPORTATION.

SUCH DISPOSITION BY THE GOVERNMENT OF THE COUNTRY OF IMPORTATION COULD INCLUDE DELIVERY TO GOVERNMENT AGENCIES OR CHARITABLE INSTITUTIONS, OR BY SUBSEQUENT SALE AT PUBLIC AUCTION. THE UNAUTHORIZED TRADEMARK OR TRADENAME SHOULD BE REMOVED WHERE FEASIBLE PRIOR TO THE LIMITED OFFICIAL USE

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DISPOSITION OF THE COUNTERFEIT MERCHANDISE. FOR UNSAFE MERCHANDISE DESTRUCTION WOULD APPEAR TO BE THE ONLY REASONABLE METHOD OF DISPOSITION.

B. COUNTERFEIT TRADEMARKED MERCHANDISE SHOULD BE DEFINED TO INCLUDE ONLY THOSE GOODS TO WHICH A TRADEMARK OR TRADENAME, WHICH IS ENTITLED TO PROTECTION UNDER THE LAWS OF THE IMPORTING COUNTRY, HAS BEEN AFFIXED WITHOUT THE AUTHORIZATION OF THE TRADEMARK OR TRADENAME OWNER.

SUBSTANTIVE LAW CONCERNING WHICH TRADEMARKS OR TRADENAMES ARE ENTITLED TO PROTECTION WOULD NOT BE ALTERED BY THE AGREEMENT, NOR WOULD THE AGREEMENT REQUIRE FORFEITURE FOR GENUINE ARTICLES WHICH WERE IMPORTED WITHOUT THE CONSENT OF THE TRADEMARK OR TRADENAME OWNER.

C. THE AGREEMENT SHOULD CONTAIN PROCEDURAL

SAFEGUARDS WHICH WOULD PREVENT THE FORFEITURE  
SANCTION FROM BECOMING A NONTARIFF BARRIER  
TO LEGITIMATE TRADE.

AT A MINIMUM, SUCH PROCEDURES SHOULD  
PROVIDE FOR NOTICE TO THE IMPORTER THAT  
SEIZURE AND FORFEITURE IS CONTEMPLATED, AND  
AN OPPORTUNITY FOR A FAIR AND REASONED  
DETERMINATION OF THE QUESTION. SUCH PRO-  
CEDURES WOULD BE INVOKED BY CUSTOMS OFFICIALS  
NORMALLY AFTER BEING ALERTED BY THE TRADE-  
MARK OR TRADENAME OWNER, AND COULD TAKE  
THE FOLLOWING FORM:

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CUSTOMS WITHHOLDING DELIVERY OF COUNTER-  
FEIT MERCHANDISE AND NOTIFYING THE IMPORTER  
OF THAT ACTION TOGETHER WITH ADVISING HIM  
THAT HE MAY FILE A STATEMENT DENYING THAT THE  
ARTICLE IS IN FACT COUNTERFEIT MERCHANDISE.  
IF THE IMPORTER FILES THE APPROPRIATE DENIAL  
THEN THE TRADEMARK OR TRADENAME OWNER WOULD  
BE GIVEN NOTICE AND PROVIDED WITH AN  
OPPORTUNITY TO DEMAND THE EXCLUSION OF THE  
ARTICLES FROM ENTRY PROVIDED THAT HE SUPPLIES  
A BOND SUFFICIENT TO HOLD THE IMPORTER OR  
OWNER OF THE IMPORTED ARTICLES HARMLESS  
FROM ANY LOSS OR DAMAGE RESULTING  
FROM THE DETENTION OF THE IMPORTED GOODS.  
IF AN ADMINISTRATIVE REVIEW SUSTAINS THE  
CLAIM THAT THE DETAINED ARTICLE IS COUNTERFEIT,  
THE ARTICLE WOULD THEN BE SEIZED AND FORFEITED  
IN ACCORDANCE WITH CUSTOMS REGULATIONS AND  
PROCEDURES. SUCH ADMINISTRATIVE REVIEW  
WOULD BE SUBJECT TO APPEAL TO BY AN INDEPENDENT  
BODY SUCH AS BY THE JUDICIARY.

D. THE AGREEMENT SHOULD ALSO PROVIDE A  
MECHANISM FOR CONSULTATION AND DISPUTE  
SETTLEMENT, POSSIBLY BY REFERENCE TO THE  
PROCEDURES OF THE GATT.

3. IF ASKED DEL SHOULD STATE THAT SUBSTANTIVE LAW  
CONCERNING APPELLATIONS OF ORIGIN OR GEOGRAPHICAL  
INDICATIONS OF SOURCE WILL NOT BE COVERED BY THE  
AGREEMENT.

4. DEL SHOULD DRAW FROM PREVIOUS INSTRUCTIONS FOR  
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NTM PARENT GROUP TO DEAL WITH POSSIBLE INITIATIVES  
TO INCLUDE ANTIDUMPING IN MTN, AND SHOULD DRAW FROM  
PRINCIPLES OF AGREEMENT IN PARA 2 TO CAST COMMERCIAL  
COUNTERFEITING AS PURELY PROCEDURAL CUSTOMS MATTER,  
AND SHOULD FURTHER STATE THAT COMMERCIAL COUNTER-  
FEITING HAS BEEN TAKEN UP IN CUSTOMS MATTERS SUB-  
GROUP UNDER EXISTING PROCEDURES.

5. FYI PARA 2B ABOVE DEALS IN PART WITH QUOTE  
PARALLEL IMPORTATIONS END QUOTE. MORE DETAILED  
INSTRUCTIONS WILL DEAL WITH, AMONG OTHER SPECIFIC  
ISSUES, SITUATIONS WHERE DIFFERENT TRADEMARK  
OWNERS EXIST IN COUNTRIES OF EXPORTATION AND  
IMPORTATION. END FYI.  
CHRISTOPHER

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PAGE 01 STATE 228554  
ORIGIN EB-08

INFO OCT-01 ISO-00 /009 R

66011  
DRAFTED BY:EB/OTSTA/LLEVINE  
APPROVED BY/EB/OT/STA:TOHERRON  
-----119929 131736Z /43  
O 131725Z SEP 78  
FM SECSTATE WASHDC  
TO USMISSION GENEVA IMMEDIATE

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USMTN

FOLLOWING REPEAT STATE 228554 ACTION ALL OED CAPITALS ALL EAST ASIA  
N AND PACIFIC DIPLOMATIC  
POSTS BRASILIA MEXICO CARACAS SETP 8

QUOTE LIMITED OFFICIAL USE STATE 228554

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NOTE BY OC/T: ORIGINAL DIST: ARA,ISO,STR/STRE,TRSE,LAB,COME,EB,  
SIG,GATT,JUSE.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** COUNTERFEITING, CUSTOMS OFFICIALS, MEETINGS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 08 sep 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
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**Drafter:** MHATHAWAY:MM  
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**Executive Order:** N/A  
**Errors:** N/A  
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**Office:** ORIGIN STR  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
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**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 05 may 2005  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
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**SAS ID:** 1497654  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** COMMERCIAL COUNTERFEITING, INSTRUCTIONS FOR CUSTOMS MATTERS SUBGROUP AND NTM PARENT GROUP MEETINGS.  
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**TAGS:** ETRD, GATT  
**To:** OECD POSTS EA POSTS MULTIPLE  
**Type:** TE  
**vdkgvkey:** odbc://SAS/SAS.dbo.SAS\_Docs/68221054-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014